

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

AMERICAN INTERNATIONAL  
GROUP, INC., et al.,

Plaintiffs,

v.

ACE INA HOLDINGS, INC., et al.,

Defendants.

Case No. 07 CV 2898

Judge Robert W. Gettleman

Magistrate Judge Sidney I. Schenkier

---

LIBERTY MUTUAL INSURANCE  
COMPANY, et al.,

Counter-Claimants,

v.

AMERICAN INTERNATIONAL  
GROUP, INC., et al.,

Counter-Defendants.

---

SAFECO INSURANCE COMPANY OF  
AMERICA and OHIO CASUALTY  
INSURANCE COMPANY, individually, and on  
behalf of a class consisting of members of the  
National Workers Compensation Reinsurance  
Pool,

Plaintiffs,

v.

AMERICAN INTERNATIONAL GROUP, INC.,  
et al.,

Defendants.

Case No. 09 CV 2026

Judge Robert W. Gettleman

Magistrate Judge Sidney I. Schenkier

**CORRECTED VERSION OF EXHIBIT 7 TO  
MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR  
CLASS CERTIFICATION, ORIGINALLY FILED ON JULY 16, 2010**

## **EXHIBIT 7**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

AMERICAN INTERNATIONAL  
GROUP, INC., et al.,

Plaintiffs,

v.

ACE INA HOLDINGS, INC., et al.,

Defendants.

Case No. 07 CV 2898

Judge Robert W. Gettleman

Magistrate Judge Sidney I. Schenkier

LIBERTY MUTUAL INSURANCE  
COMPANY, et al.,

Counter-Claimants,

v.

AMERICAN INTERNATIONAL  
GROUP, INC., et al.,

Counter-Defendants.

SAFECO INSURANCE COMPANY OF  
AMERICA and OHIO CASUALTY  
INSURANCE COMPANY, individually, and on  
behalf of a class consisting of members of the  
National Workers Compensation Reinsurance  
Pool,

Plaintiffs,

v.

AMERICAN INTERNATIONAL GROUP, INC.,  
et al.,

Defendants.

Case No. 09 CV 2026

Judge Robert W. Gettleman

Magistrate Judge Sidney I. Schenkier

**DECLARATION OF GARY M. ELDEN**

I, Gary M. Elden, declare as follows:

1. I am an attorney at the firm of Grippo & Elden LLC ("G&E"). I am the lead

G&E attorney working on this matter. Five other G&E attorneys are working on this matter with me. I have practiced law for over 40 years and am admitted to practice in Illinois, in this Court, the United States Supreme Court, and numerous other jurisdictions. I am a member of the trial bar of this Court. I am a Fellow of the American College of Trial Lawyers.

2. I have worked on scores of cases that involved complex litigation. Many of these cases went to trial. The vast majority of the work G&E does involves complex commercial cases.

3. I also have worked on, and been the lead trial attorney on, numerous cases either prosecuting or defending against a class action.

4. A substantial portion of my practice, and the practice of G&E, involves litigation related to the business of insurance. I have worked on numerous cases involving workers compensation issues.

5. I have worked on numerous cases prosecuting or defending claims involving the Racketeer Influenced and Corrupt Organizations Act ("RICO"), fraud, breach of contract, and other claims alleged in this matter.

6. A biography listing some of my experience is attached hereto as Exhibit A.

7. Gary Miller and Matthew Sitzer, two principals at Grippo & Elden, also have worked and will continue to work on this matter.

8. Gary Miller has extensive experience representing clients in complex civil litigation. He has handled many cases involving claims regarding RICO, fraud, breach of contract, and other claims alleged in this matter. He has represented clients in numerous class action lawsuits. A biography listing some of Mr. Miller's experience is attached hereto as Exhibit B.

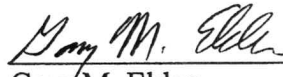
9. Matt Sitzer also has extensive experience in complex commercial cases. He has

handled many cases involving RICO, fraud and breach of contract. He has worked on several class action matters. Mr. Sitzer also has represented large insurance companies in numerous high-stakes matters. A biography listing some of Mr. Sitzer's experience is attached hereto as Exhibit C.

10. G&E, in combination with co-counsel, has investigated the claims and potential claims that plaintiffs and the alleged class have against defendants in this matter, including the claims asserted in the First Amended Complaint that plaintiffs have filed in this action.

11. G&E has substantial experience in handling large, complex commercial cases and has sufficient resources to vigorously pursue this matter.

I swear to the truth of the foregoing under penalties of perjury under the laws of the United States. Executed this 9 day of July, 2010, at Chicago, Illinois.

  
\_\_\_\_\_  
Gary M. Elden

# **Exhibit A**



## Gary M. Elden Principal



### PHONE:

312.704.7740

### E-MAIL:

gelden@grippoelden.com

### EDUCATION

University of Illinois (A.B., *summa cum laude*, 1966)

- Phi Beta Kappa scholarship for outstanding liberal arts graduate
- Merriam scholarships for outstanding political science sophomore, junior and senior
- Phi Kappa Phi, Bronze Tablet, James Scholar, Illinois State Scholar

Harvard Law School (J.D., *magna cum laude*, 1969)

- Top 3% of class (estimated)
- Senior thesis published as "Forty Acres and a Mule," With Interest: The

For more than 40 years Mr. Elden has litigated complex commercial civil matters. Since 1978, he has been on trial at least two months out of every year. He has tried jury cases in more than a dozen jurisdictions from Washington, D. C. and New York, to California including trials in Fayetteville, Ft. Smith, and Helena, Arkansas; Hartford, Ct; and Detroit and Bay City, MI. In 2006, he tried cases in New York City, San Francisco, Chicago, and Charlotte, NC., in 2007 and 2008 in Chicago, New York, and San Francisco. Most cases have alleged breach of contract, breach of fiduciary duty, and fraud. Many have sought punitive damages. Many have alleged a statutory violation; at least a dozen cases have involved statutes relating to each of the following: antitrust, consumer protection, consumer credit, state corporation laws (primarily Delaware and Illinois), ERISA, franchising, insurance, privacy, RICO, securities, or trade secrets. More than 50 have sought equitable relief (in particular, injunctions). More than 50 were class actions, of which Mr. Elden tried three to verdict, all successfully. During the 1990s, about 25% of his practice was in arbitration, primarily AAA or NASD, and he has been involved in dozens of claims arbitrated to conclusion. More than 75% of final decisions at the trial court or arbitration level have been favorable to his clients.

Mr. Elden has handled (and usually argued) more than 50 appeals, mostly in Illinois state courts and the Seventh Circuit, but also in the Fourth, Sixth, Eighth, Ninth, and Tenth federal circuits, the U.S. Supreme Court, and Michigan, New York, and California state appellate courts, with more than 80% of results favorable to his clients, including published opinions that significantly shaped the law in several fields.

During the last ten years, a majority of his time has been spent on cases with damage claims of eight or more digits. Although 75% of his work is for defendants, seven times his clients have received huge checks – two for nine-digit amounts, five for eight-digit amounts – three times after verdicts, twice after a month of trial but before verdict, twice before trial. In one case, his clients received from a Ft. Smith, Arkansas jury the largest verdict ever in the Western District of Arkansas which, with other recoveries, fully paid losses of thousands of claimants as well as legal fees and costs. In 2003, his client defendant (an insurance broker) obtained a

Constitutionality of Black Capitalism, Benign School Quotas, and Other Statutory Racial Classifications," 47 Journal of Urban Law 591 (1970)

### **PRACTICE AREAS**

Business Litigation

### **BAR ADMISSIONS**

- State of Illinois
- U.S. District Court, Northern District of Illinois, Trial Bar
- U.S. Supreme Court
- U.S. Courts of Appeals, Fourth, Sixth, Seventh, Eighth, and Tenth Circuits
- U.S. District Courts, Eastern District of Michigan, Eastern and Western Districts of Arkansas, Eastern District of Wisconsin

### **ORGANIZATIONS**

- Fellow, American College of Trial Lawyers (since 1990)
- Fellow, American Bar Foundation;
- American Jury Project Commission (Seventh Circuit)
- Appellate Lawyers Association (past director and officer)
- Voted one of "The Top 100 Illinois Super Lawyers" and a "Business Litigation Super Lawyer" in Chicago Magazine's First and Second editions of the Annual Guide to the Top Attorneys in Illinois in 2005 and 2006, and one of

directed verdict at the close of a three-month plaintiff's case. The codefendant was held liable for more than \$50 million. In June 2004, his client (a co-op) obtained a directed verdict in a construction dispute with a tenant and then was awarded a substantial fee. In December 2004, a judge found in favor of his clients, president and chairman of a corporation, in a derivative suit alleging breach of fiduciary duty. A Chicago jury awarded his computer consulting clients a verdict, which after being affirmed March 31, 2005, produced a settlement (at less than 1% discount) of almost \$8 million. In 2005, the New York Appellate Division affirmed dismissal of counterclaims against his insurer client. In 2008, the New York Appellate Division decided what opponents and the trade press described as a "landmark" insurance coverage case on the so-called "non-products" issue. Also in 2008, a New York trial court awarded contribution damages exceeding ten million dollars (exact amount still in dispute).

### **Principal recent clients include:**

- American Express
- Armstrong Foods (largest Canadian dairy cooperative)
- Aon
- Arryx (outside directors)
- Commonwealth Edison (Exelon)
- Continental Insurance
- CNA Financial
- Professor Richard Epstein (University of Chicago Law School)
- Fireman's Fund
- GATX
- GETCO (Global Electronic Trading Co.)
- Goldman Sachs
- HMO America (now part of United HealthCare Corporation)
- Household International (now part of HSBC)
- IMC Global
- Inland Steel (now part of Ispat International N.V.)
- International Insurance (former Xerox subsidiaries)
- Loews
- Lorillard
- McDonald's
- MetLife
- Mesrirow
- Ed Miniati, Inc.
- National Surety
- Photogen (now IMCOR)
- Pritzkers - family members and businesses
- RealNetworks



the "Top Lawyers in Illinois" and "Leading Lawyer - Commercial Litigation and Civil Appellate" by Leading Lawyers Network (Chicago Law Bulletin)

- Who's Who in America, Who's Who in American Law, Best Lawyers in America, Leading Illinois Attorney - Commercial Litigation (American Research Council) and four other similar designations

- Ronin Capital LLC
- Safety-Kleen
- Salomon Smith Barney
- Snap-on, Inc.
- Stafford Trading
- Technology Solutions Company (TSC)
- True Value
- U.S. Cellular
- Wells Fargo
- Five of the leading law firms in the country (as parties in major litigation)

Mr. Elden's appellate cases have helped shape securities law. He has won: a leading U.S. Supreme Court case defining "security" (to include demand notes); the leading Illinois state case defining "security" and "underwriter" (to include insiders creating voting trust); the leading Seventh Circuit case denying liability for alleged non-disclosure of pending legal proceedings (defendant utility won summary judgment though unpredicted administrative action caused \$1 billion stock loss); as well as other significant decisions.

On trade secret and non-compete contracts law, one of his cases invalidated an overbroad agreement in an Illinois case of first impression. Numerous published cases have largely established the law in cases of non-compete contracts and theft of trade secrets by departing representatives of broker-dealers and insurers. On arbitration law, he has won more than a dozen motions or appeals, producing published opinions: upholding challenged arbitration provisions especially in franchising agreements; precluding class actions due to arbitration provisions; and determining what issues are for courts and what for arbitrators in NASD arbitrations.

On ERISA issues, he has tried five cases to verdict and argued three appeals resulting in published opinions. In one, his client defeated the Department of Labor concerning the duties of liability insurers issuing fiduciary policies to ERISA trustees. In the others, the Eighth and Tenth Circuits disagreed on the responsibilities for third-party administrators and their affiliates. Successful trial court decisions clarified the law on variable annuities, guaranteed benefit contracts and the liabilities of fiduciaries with limited defined duties.

Other significant published decisions in favor of his clients: established rules limiting insurance coverage (numerous opinions) and limiting a principal's liability for fraudulent actions of an agent; upheld decertifications of class actions for failure to pay notice costs (in IL and

TX) and refusals to certify class actions (Seventh Circuit); imposed fraud liability on accountants; and created immunity from suit for Board of Trade arbitrators.

Mr. Elden has written and lectured on various litigation matters, mostly involving securities law, insurance coverage, and trial practice. Since shortly after he graduated, he has worked pro bono on civil rights lawsuits, including a series of federal court trials that led to published opinions integrating the Chicago Police Department.

**111 South Wacker Drive • Chicago, IL 60606**

# **Exhibit B**



## Gary M. Miller

### Principal



Gary Miller represents clients in complex business disputes. He has handled cases concerning many areas of commercial litigation, including breach of contract, breach of fiduciary duty, common law and statutory fraud, post-termination covenants, trade secrets, trademark, trade dress and copyright. His practice covers matters pending in tribunals nationwide, including federal district and appellate courts in many jurisdictions and state courts in Illinois, New York, California, Washington, Texas and Florida. He also has represented clients in arbitrations and mediations before the Financial Industry Regulatory Authority, the American Arbitration Association and JAMS.

#### PHONE:

312.704.7703

#### E-MAIL:

gmiller@grippoelden.com

#### EDUCATION

University of Illinois (B.A., 1991)

- Phi Beta Kappa

University of North Carolina  
School of Law (J.D., 1995)

- Order of the Coif
- Graduated with High Honors
- Three-year merit based scholarship
  - As a member of the University of North Carolina Law Review, authored the Note, *Balancing the Welfare of Children with the Rights of Parents: Petersen v. Rogers and the Role of Religion in Custody Disputes.*

#### Representative cases:

- Represented the Chicago Cubs in a suit against the owners of buildings across from Wrigley Field who charged admission to watch Cubs games from the rooftops of their facilities. The case involved novel issues of common law misappropriation, copyright preemption and the fair use doctrine.
- Defended IBM in several large breach of contract and fraud cases concerning complex software implementations. *See Irwin Seating Co. v. IBM*, 2007 WL 2351007 (W.D. Mich. Aug. 15, 2007); *M. Block & Sons, Inc. v. IBM*, 2004 WL 1557631 (N.D. Ill. July 8, 2004). Represented IBM in other matters, including a suit brought by FDT.com relating to the design of a website and a suit brought by an IBM subcontractor concerning work on a government computer project. *See Business Systems Engineering, Inc. v. IBM*, 520 F. Supp. 2d 1012 (N.D. Ill. 2007).
- Defended the streaming media pioneer RealNetworks in the first internet privacy class actions. *In re RealNetworks Privacy Litigation*, 2000 WL 631341 (N.E. Ill. May 8, 2000). Represented RealNetworks in other matters involving allegations of consumer fraud. *Koresko v. RealNetworks*, 291 F. Supp. 2d 1157 (E.D. Cal. 2003).
- Represented clients in over 50 fair competition cases in federal and state courts and arbitration forums nationwide. Most of these cases involved claims for breach of post-termination covenants, misappropriation of trade secrets and breach of fiduciary duty. Mr. Miller's clients in this areas include Smith Barney, American

**JUDICIAL CLERKSHIP**

Law clerk to the Honorable  
Rebecca Beach Smith of the  
United States District Court for  
the Eastern District of Virginia  
(1995-1996)

**PRACTICE AREAS**

Business Litigation

**BAR ADMISSIONS**

- State of Illinois
- United States Court of Appeals for the Seventh Circuit
- United States Court of Appeals for the Sixth Circuit
- United States District Court for the Northern District of Illinois (Trial Bar)
- United States District Court for the Western District of Michigan

Express Financial Advisors, IDS Life, CNA and CCA Strategies.

- Handled numerous trademark and copyright cases in federal courts across the country.
- Defended proprietary trading firm in several lawsuits involving claims for breach of contract, breach of fiduciary duty and fraud. Represented firm in case concerning ownership of copyrights and other intellectual property rights in a computer system used to trade options.

**Publications and Speeches:**

- Gary M. Miller and Lynn H. Murray, *Trade Dress and Other Intellectual Property -- Implications for Landlords* (12/3/07).
- Gary M. Miller and Lynn H. Murray, *Protecting Your Products and Packaging* (10/18/07).
- Gary M. Miller, *Emergency Litigation* (8/31/06).
- Gary M. Miller and Todd C. Jacobs, *Enforcing Clickwrap Agreements*, NATIONAL LAW JOURNAL (March 11, 2002).

**Acknowledgements:**

- Illinois Super Lawyer, Business Litigation
- Illinois Leading Lawyer
- Chicago Magazine's Rising Stars Section -- Outstanding Young Lawyer

Mr. Miller has represented several clients on a pro bono basis in federal civil rights litigation. He has served on the judicial evaluation committee of the Chicago Counsel of Lawyers. He has judged moot court and mock trial competitions facilitated by Kent Law School. He also has served as an instructor for a Northwestern Law School program designed to acclimate students to the rigors of law school during the summer before their 1L year.

111 South Wacker Drive • Chicago, IL 60606

# **Exhibit C**



## Matthew O. Sitzer

### Principal



#### PHONE:

312.704.7704

#### E-MAIL:

msitzer@grippoelden.com

#### EDUCATION

University of Notre Dame (B.A.,  
*magna cum laude*, 1988)

Northwestern University School of  
Law (J.D., 1992)

- Managing Note &  
Comment Editor,  
*Northwestern Journal of  
Criminal Law and  
Criminology*, 1991-92.

#### PRACTICE AREAS

Commercial Litigation

#### BAR ADMISSIONS

- State of Illinois
- U.S. Court of Appeals for  
the Seventh Circuit
- U.S. District Court,  
Northern District of

Matt Sitzer advises and represents businesses in a wide variety of complex commercial disputes. Matt has successfully litigated cases and advised clients in matters involving such diverse areas of law as breach of contract, commercial fraud and civil RICO, class actions, environmental and mass tort insurance coverage, intellectual property, antitrust and professional sports arbitrations. He has practiced and tried cases in state and federal courts, and before arbitration panels, throughout the United States and Canada.

Matt's ongoing and recent representative matters include:

- *Safeco, et al. v. AIG, et al.*, (N.D. Ill.). Representing putative class of insurance companies in case involving allegations of decades-long financial reporting fraud by a leading market insurer on other insurers participating in workers' compensation state residual markets.
- *American National Bank v. AXA Client Solutions LLC*, (N.D. Ill.). Successfully represented hedge fund in connection with breach of contract action against annuity company that had attempted to restrict our client's trading rights.
- *Plant Insulation Co. v. Fireman's Fund Ins. Co., et al.*, (Superior Ct., Cal.). Represented insurance company in two-month California trial disproving plaintiff's allegations that our client had issued insurance contracts in the 1940's covering plaintiff's asbestos liabilities.
- *Alexander v. QTS Corp., et al.*, (N.D. Ill.). Defended real estate company in antitrust class action involving allegations of bid rigging in connection with the Cook County Tax Sale.
- *Continental Casualty Co. v. Employers Ins. of Wausau, et al.*, (Superior Ct., New York). Represented insurer in leading New York class action litigation and appeal rejecting class claims for unaggregated "non-products" coverage for asbestos bodily injury.
- *TSC v. Northrop Corp.*, (Cir. Ct. Cook County, Ill.; N.D. Ill.). Successfully represented technology services company in breach of contract action against defense contractor and related shareholders' class action alleging false and misleading statements involving revenue recognition.
- *Aetna v. Dow Chemical Co.*, (E.D. Michigan). Successfully

- Illinois, including Trial Bar
- U.S. District Court, Eastern District of Michigan
- U.S. District Court, Eastern District of Pennsylvania
- U.S. District Court, Eastern District of Washington
- U.S. District Court, District of Alaska
- Admitted on *pro hac vice* basis to numerous State courts nationwide

- defended insurance company in two-month jury trial involving the responsibility for environmental clean-up and remediation costs, settled favorably on the eve of closing arguments.
- *Pacific Ins. Co., et al. v. Catholic Bishop of Spokane, et al.*, (E.D. Washington). Represented insurer in Washington coverage litigation involving potential coverage for clergy abuse claims and associated bankruptcy of insured Diocese.
- *FECC v. Safety-Kleen*, (Cir. Ct., Cook County, Ill.). Successfully defended environmental services provider in breach of contract trial against equipment lease financing company and in subsequent affirmative action against the company for recovery of our client's attorneys' fees.
- *National Hockey League Players' Association*. Represented the NHLPA in connection with several player salary arbitrations, including winning some of the highest salary awards on record for goaltenders.

Matt also serves as the firm's partner in charge of associate case assignments.

**111 South Wacker Drive • Chicago, IL 60606**